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Speaking of the Dead

ABSTRACT.

Many people think that the reputations of the dead should be treated with respect, though this position is hard to defend if we take the dead to be not only unconscious of what is said about them but also non-existent. In this paper I first examine some unsuccessful arguments for holding that the dead are wronged by slander or denigration and ask what kind of civilised values are at issue when we speak about the dead. Subsequently I propose an alternative account which identifies the *ante-mortem* person as the real subject of posthumous slander. One important implication of this view is that moral considerability does not decline with time, so that failing to respect a dead person's good name is equally wrong whether she is long-dead or only recently deceased.

KEYWORDS

The dead; reputation; posthumous slander; ante-mortem persons; Kant; Pitcher; Feinberg.

Speaking of the Dead

Who steals my purse steals trash ...

But he that filches from me my good name

Robs me of that which not enriches him,

And makes me poor indeed

(*Othello*, Act 3, Sc.3, 157-61).

I

Most people would agree with Iago that a good name is something of value, and that we should be careful how we speak or write about the reputations of others. Treating another's reputation as a conversational plaything is neither right nor polite, while taking away a person's good name for darker purposes born of malice, envy or jealousy (as the hypocritical Iago did) is seriously wrong behaviour. If telling lies to show other people in a bad light is obviously immoral, charity dictates that we should sometimes be reticent about their faults, where no good would be done by revealing them. Few people care to be the subject of unflattering remarks, even where they know that the practical consequences will be limited. Shrugging off with aristocratic hauteur what other people say about us is not as easy as some austere moralists have thought; nor is it clearly virtuous. Being social animals living on close terms with others, we naturally care what others think about us, and striving *not* to care would be a recipe for alienation. As Alasdair MacIntyre notes, 'I am part of their story, as they are part of mine. The narrative of any one life is part of an interlocking set of narratives' (MacIntyre 1984: 218).

The reputations of living people, who have interests to be affected and feelings to be hurt, plainly ought to be treated with respect. But are there any sound moral reasons why we should deal similarly with the reputations of the *dead*? The obvious ones which apply in the case of the living don't seem to apply to the deceased, who cannot be affected, for better or worse, by any posthumous changes to their reputations. Only the living can suffer shame, embarrassment or a sense of slight, and dead people, who tell no tales, don't hear any either. The dead appear to be without any current interests on which posthumous praise or slander can impact. Of course, traducing the memories of the recently dead may cause distress to their living relatives, friends and admirers, whose feelings evidently *can* be hurt. But where the dead have passed beyond living memory, even that reason for reticence fails. (One could also ask whether the living *should* feel such distress on behalf of the permanently insensible. It may be misguided to care about the reputation of those who are past caring about it themselves.) Consider Peter Shaffer's 1979 play *Amadeus* (later turned into a popular film) which peddled a wholly fictional image of the composer Antonio Salieri as the jealous murderer of his rival Mozart. *Amadeus* could be criticised as breaching a general moral principle against lying, in view of its cavalier attitude to the known facts. But it is less clear that the dead Salieri was harmed or wronged by this witting detraction. Slandering the dead might seem akin to hitting a man when he's down, an unpleasant form of victimisation of the weak by the strong. Yet the analogy is question-begging until it is shown that the dead are genuinely vulnerable beings with surviving interests to protect.

In this paper I explore the question of whether playing fast and loose with the reputations of the dead is morally objectionable for any reasons beyond the liberties that it takes with the truth. After discussing some unsatisfactory grounds for holding that the reputations of the dead should be treated with respect, I shall propose what I think is a better argument in support of this view.

As a secondary question, I shall also ask whether, *if* the dead retain a claim to moral consideration, the force of the claim weakens over time, eventually fading out to nothing. Would it be morally worse to tell a scandalous tale about the late Diana, Princess of Wales, than about Cleopatra, Queen of Egypt (disregarding here the associated distress liable to be caused to living people in the former case)? Does time, the great destroyer, root up moral status too? ¹ It is natural to care more about those people, living or dead, to whom we feel closest in space (including social space) and time. Therefore things which are said about Diana can seem to be morally more significant than tales told about the ancient Queen of the Nile. Yet this discriminatory attitude, I shall argue, is morally unjustified.

II

One tempting answer to the question why we should treat the dead with respect is that this is how we ourselves hope to be treated some day. The prospect of losing our good name is distasteful, irrespective of when it happens. And what we don't want to suffer ourselves we should refrain from inflicting on others. Yet the use of the word 'suffer' reveals the weakness of this argument. For in what sense can the dead be said to 'suffer' anything, when their awareness of events will be zero? It is true, as Thomas Nagel pointed out years ago, that some things can be bad for us without our being aware of them. For instance, to be betrayed by those one has trusted is bad, even if one never learns of it: 'the natural view is that the discovery of betrayal makes us unhappy because it is bad to be betrayed – not that betrayal is bad because its discovery makes us unhappy' (Nagel 1979: 4-5). If not all evils are experienced evils, then it is false that 'what you don't know can't hurt you'. If being badly spoken about is an evil analogous to betrayal, then

the insensibility of the dead might not be a compelling reason to regard posthumous slander as trivial. But this Nagelian line, as various writers have noted, fails to go the heart of the matter. The basic problem with the dead is not that they lack awareness but that they lack *existence*. As Ernest Partridge argued, ‘Nothing happens to the dead ...[A]fter death, with the removal of a subject of harm and a bearer of interests, it would seem that there can be neither “harm to” nor “interests of” the decedent’ (Partridge 1981: 253).² If death marks the absolute termination of the self (as I shall assume in this paper), then to claim that the dead should be accorded respectful treatment is doubtfully coherent. For if death is personal extinction, there is no longer a subject to be treated with respect or disrespect. A person’s physical remains plainly cannot play that role, for bones maketh not the man; and even those who think we can wrong the dead by abusing their remains don’t usually consider the remains themselves to be the subject of the wrong.

Could it be that a care for posthumous reputation rests simply on an illusion – the illusion that death is not really final, and that we somehow survive our demise, if only as a bare point of view that gazes on a world from which we are physically absent?

This problem of the missing subject is sometimes obscured by the habit of speaking of the *reputation* or the *memory* of the dead as the object deserving of respect. Cleopatra and Diana may be gone but they leave behind a reputation (pithily defined by the *Concise Oxford Dictionary* as ‘what is generally said or believed about a person’s or thing’s character’). To damage someone’s reputation posthumously by spreading a malicious slander is an act of manipulation practised on living people’s beliefs. However, it would be a very odd slanderer who ‘had it in’ not for the person he denigrated but for that abstract thing, her reputation. To traduce a person’s reputation is plainly to traduce the person whose reputation it is. Likewise, a

tombstone inscribed with the words ‘Sacred to the memory of Mary Smith’ is intended to honour Mary Smith, not whatever recollections or records people happen to retain of her. Metonymical talk of honouring the reputations of the dead thus does nothing to solve the problem of the absent subject.

Despite the problem of the subject, many share the intuition that the reputations of the dead ought to be protected against unfair abuse. Generally it is the reputations of the recently dead which receive the most attention but occasionally trouble is taken to restore the reputation of a long-dead subject. For instance, there is a special society dedicated to defending King Richard III of England against centuries of denigration. Following his defeat at Bosworth in 1485 by the forces of Henry Tudor, afterwards King Henry VII, Richard has been almost universally execrated as a bad man and a bad ruler. To this day the indelible image of the king is that of the evil, envious hunchback portrayed by Shakespeare in the most lurid of his history plays. The Richard III Society, which claims this image to be profoundly wrong, was formed in 1924 and currently boasts an international membership of over four thousand. Affirming that ‘even after all these centuries the truth is important,’ the present Duke of Gloucester and President of the Society writes on its website that ‘It is proof of our sense of civilised values that something as esoteric and fragile as a reputation is worth campaigning for.’

This is obviously not the place to debate the many vexed questions about the record of King Richard III, though it is worth remarking that most hard-headed contemporary historians look sceptically on ‘Ricardians’ attempts to exonerate the King from some of the most serious charges traditionally levelled against him (including that of murdering the young princes in the Tower of London). In view of the weighty adverse evidence, one could be forgiven for wondering whether some of his defenders are engaged less in a moral campaign to right a wrong

than in an amusing flight of historical whimsy. Where re-working a long-dead subject's reputation becomes a species of make-believe, its moral *bona fides* is open to question. But be that as it may, the present question is whether it should matter, except to historians, what anyone now thinks about a man who has been dead for over five centuries. Would we be failing to live up to 'our sense of civilised values' if we followed the scriptural advice and left 'the dead to bury the dead' (Matt.8: 22)? Reputations may be, as the Duke of Gloucester remarks, fragile things (though it is less clear in what sense they are 'esoteric'), but that only says that they are vulnerable to damage ('bubbles', easily burst, as Shakespeare's Jaques calls them), not that they merit protection.

III

What particular 'civilised values' might be at issue anyway in the present context? One prima-facie relevant 'civilised value' is truthfulness; and the lack of truthfulness shown by the King's enemies is what the members of the Richard III Society principally complain about. But should we always tell the truth, the whole truth and nothing but the truth about the dead? What if there are things that could truthfully be said about them are unflattering or even shameful? It is sometimes held that we should say nothing but good about the dead (*de mortuis nihil nisi bonum*); but unless we are dealing with a saint, such economy of statement will produce a highly distorted portrait rather than an accurate one. There are also issues of privacy to be considered. Most people dislike their personal details being released to all and sundry even where there is nothing discreditable about them. A person may consider the facts about his medical history, sexual tastes, friendships, fantasies and pastimes to be nobody's business but his own, or that of

those to whom he chooses to reveal them. On a minimal construal, to be truthful is to avoid telling lies. In a less minimal sense, it also excludes being economical with the truth. Being truthful about someone in the latter sense means giving an unedited, warts-and-all portrait of him. But truthfulness of *this* sort, which disregards privacy and cares little for feelings, has a shaky claim to be considered a ‘civilised value’. Discreet reticence might seem to deserve the label far more.

But discreet reticence isn’t wholly secure as a ‘civilised value’ either. To suppress the truth about a person’s faults can lead to her being assigned a better character than she merits, which may have serious practical consequences. If John fails to tell Sue that Meg is untrustworthy, then John bears some share of the moral responsibility when Meg cheats Sue. But once a person is dead, the same need to know about her vanishes. So why reveal a person’s faults when they can no longer do any harm? ³ Keeping a discreet silence about the sins of the dead may seem prompted also by another putative ‘civilised value’, charity. Kant, however, took a different view, holding in *The Metaphysics of Morals* that ‘a well-founded accusation against [a dead person] is still in order (so that the principle *de mortuis nihil nisi bene* is incorrect)’ (Kant 1991: 111). People who have lived well deserve to be given posthumous credit for it, and they are wronged, thinks Kant, if calumniators attempt to take away their honour (ibid: 112). (Note that Kant does not merely say that those who calumniate the dead do wrong, but specifically that they *wrong the dead*.) But someone who has *not* lived well has no right to be spared just censure. While posthumously suppressing information about a person’s faults may have no practical negative effects, Kant’s point appears to be that it would be bad for our moral accounting. Setting the moral record straight is something to be done for the sake of the moral law and irrespective of its practical consequences. Hence Kant would presumably regard it as misapplied

charity or discretion to allow a dead wrongdoer to retain the same esteem as his moral counterpart. And conversely, he would approve of trying to mend a reputation that had unjustly become tarnished. 4

Kant's endorsement of moral accounting and of awarding of praise and blame where they are due might be considered one way of expressing a sense of 'civilised values'. Yet Kant himself admits that there is something metaphysically curious about the notion of a person retaining a good or bad reputation after death ('when he no longer exists as *homo phaenomenon*'). Indeed, it is 'a phenomenon as strange as it is undeniable' that the moral law 'extends its commands and prohibitions even beyond the limits of life' (ibid: 111). Unfortunately Kant does nothing to explain how this strange phenomenon is possible ('no deduction of its possibility can be given'), contenting himself with the remark that anyone is entitled, via 'the right of humanity as such', to take on the role of apologist for the dead (ibid: 112); this is not a role that belongs only to those relatives or friends of the dead who may be adversely affected by any misrepresentation of his character.

Kant's talk of a *right* rather than a *duty* to defend the reputation of the dead suggests that two distinct strands are running through his (very condensed) discussion. One is the importance of moral accounting as a virtuous exercise which exhibits our concern for the moral law. Since we should be keenly interested in ascribing praise and blame where they are due (not being so would indicate that we took the moral law less seriously than we ought), all agents, dead or alive, are potential subjects for our judgements. No one has a right to tell us that some dead person's reputation is none of our business, since our right to pass judgement on it is 'the right of humanity as such'. The other strand in the passage relates to doing justice to moral agents themselves, both inside and outside 'the limits of life'. Kant is emphatic that the non-existence

of the dead in the sensible world is no reason to think that their moral status is now extinct, despite the impossibility of deducing its survival. Both strands are concerned with our ‘civilised values’ but they are significantly different. Trying to get our moral judgements right because moral judgements are worth getting right, and because as responsible moral agents we desire to get them right, provides a reason for caring how we judge the dead, but it is compatible with disbelieving that the dead themselves can be rightly or wrongly treated. Kant’s insistence that the latter proposition is ‘undeniable’ sits uneasily with his admission that it can’t be demonstrated. For given the intransigence of the ‘no subject’ problem, one might reasonably suspect that the reason why it can’t be demonstrated is that it isn’t true.

IV

In this section I shall look at a number of prima-facie promising but ultimately unsatisfactory justifications for caring about the reputations of the dead.

(A) It’s natural to care that our good name should be preserved even after we’re dead. This is a basic component of our self-concern, one which extends beyond the limits of our life. And since once we’re dead we won’t be able to defend our own good name, we hope that others will take the trouble to do it for us.

The first and most obvious objection to this argument is that it fails to address the problem of the subject. It may be *natural* to care about posthumous preservation of our good name, but is it *rational*? However, it might be countered that even if such concern is irrational, that does not make it unreal, and so if living people dislike the prospect of posthumous bad-mouthing, there is a strong moral case for allaying their fears by making it general practice to respect and protect

the reputations of the dead. The dead may be beyond good and evil but the living are not, and it is sufficient to think about *their* interests to justify circumspection in speaking about the dead.

The force of this argument can be admitted. But it is not an argument for *caring* about the reputations of the dead but only for being careful how we speak about them, for the sake of allaying certain anxieties felt by the living. And even as it stands, the argument is not without its problems. To begin with, the first premise is too sweeping. A person may be concerned that those whose opinion and respect she values will not think badly of her after she is dead. But this is different from hoping that the world in general will think well of her, or caring what *anyone* thinks of her decades or centuries hence. Most people are not very interested in how they appear from distant future perspectives. For those will be the perspectives of total strangers, whose paths and theirs will never cross. Moreover, the concern about how some chosen others will see one after death is often less about self and more an altruistic concern that they should be spared from feeling any distress, shame or disappointment on one's behalf.

We cannot know whether Richard III or Cleopatra would have cared what twenty-first-century people would think about their moral character, but it seems improbable. Monarchs may expect their deeds to be remembered for longer than those of ordinary mortals but they are no more proficient than anyone else at imagining the world of the distant future. And, like others, they will find it hard to get worked up about the attitudes of people with whom they will never have anything to do.

Here it might be objected that students of history are equally incapable of having any dealings with the people of the past, yet that doesn't prevent their taking an interest in what they did, felt and thought. But there is a difference. When we look back on the past we encounter determinate

people, situations and events, and we can penetrate imaginatively into their worlds with the help of the historical record. By contrast, the story of the future is a *tabula rasa*. It is impossible even to forecast tomorrow's events reliably, never mind those of coming centuries. Because we have no idea who or what will be around decades or centuries after our death, there are no determinable points to fix our attention, affections or loyalties. 5

Admittedly, this ignorance doesn't stop a few people from hoping for a long-term fame (or claiming that they do). The Roman poet Horace aspired to win a literary reputation that would be 'more durable than bronze' and last through many ages. Here the operative thought is probably that lasting fame is a *consolatio mortis* – so long as one remains in human memory, or leaves some sort of traces behind, one will not have wholly died. 6 The important thing is not *how* one is remembered as *that* one will be remembered, and so escape oblivion. And if one's chances of being remembered for any worthy reason are slim, then an unworthy one will do instead. The arsonist Herostratos burned down the Temple of Diana at Ephesus (and was executed for his pains) solely with the aim of getting into the history books. 7 To satisfy this kind of motive, it doesn't matter whether what is remembered about someone is flattering or unflattering, praiseworthy or shameful; provided that they keep oblivion at bay, laudation and damnation are all the same. Wanting to be remembered for centuries is probably not a common phenomenon, and it is easy to criticise as illusory the idea that such long-term recollection amounts to a partial evasion of death. There is no evidence, so far as I am aware, that Richard III desired this sort of 'immortality'. But if he did, an Anti-Richard III Society dedicated to confirming Richard's traditional reputation would serve the purpose quite as well as the Richard III Society!

(B) It is false that the moral considerability of predecessors or forbears tracks our ability to find imaginative common ground with them. It is a dangerous moral doctrine that we only have moral responsibilities toward those persons with whom we feel a lively sense of fellowship, or that no one has any rights against us who doesn't appeal to our imaginative sympathies. (This might be dubbed the 'fallacy of nearism'.) Although our inability to think ourselves imaginatively into others' shoes may occasionally be some excuse for our poor behaviour towards them, the force of our pertinent moral obligations is in no way lessened by such shortfall in ourselves. So in the case of the long-dead, neither their temporal distance from us nor the differences between their worlds and ours lessens our moral responsibility to protect their reputations in appropriate ways.

This argument too runs into the now familiar objection that it ignores the problem of the subject. It assumes, rather than demonstrates, that non-being is no obstacle to the retention of moral status. But the argument is additionally vulnerable to the consideration raised in connection with its predecessor, that most people have relatively short-term interests in their posthumous reputations and mostly don't care what might be said of them in the longer term. Here the issue is not the limitations of the imaginations of the living with regard to the dead, but the difficulties of making imaginative common ground with temporally distant successors. It might be claimed that even if someone doesn't care what her distant successors (or *any* successors) will think or say about her, that doesn't make it right for someone to calumniate her after her death. (Analogy: I may feel indifferent about losing some object I don't value, but that wouldn't make it morally acceptable for you to steal it from me.) But for this claim to be sustained, some answer to the problem of the subject first needs to be found.

(C) One important reason for preserving and protecting the good name of the dead is that they leave behind people who cared, and care, about them and whose feelings will be affected when they hear good or bad things said about them.

This claim is true, but irrelevant in the context. It would be cruel knowingly to cause distress to, say, the widow of some successful scientist by maliciously accusing him of having falsified his experimental data. The emotional attitudes that we have towards living people are not extinguished when they die but survive, sustained by memory. Hence we can be just as shocked and outraged when those we love are maligned posthumously as when it happens during life. Where the jealous and cowardly Dr Smith waits till after Professor Jones's death to cast aspersions on his academic integrity, one wrong-making feature of his action is the pain it causes to his widow and others who loved the dead man. Such distress to the living is less likely to be an issue when the dead person maligned has passed beyond living memory, although it is neither impossible nor particularly rare for people to feel some affection for dead people they have never met (great-grandfather, or Mozart, or St Francis of Assisi). They may also feel affronted at any shortfall in respect shown to their ancestors or heroes. Still, the distress or delight caused to living people by calumny or praise of the dead is not to be confused with the good or evil, right or wrong, done to the dead themselves; and unless the problem of the subject can be surmounted, the possibility of the latter remains in doubt.

V

In this section, I shall argue that while the problem of the subject cannot be solved, it can be circumvented *if* we are willing to make a move that has become familiar in recent literature

on death and the dead, and identify the subject of the harm or benefit of posthumously occurring events as the *ante-mortem* person, i.e. the person as she is before the point of death. Although this is a controversial move and rejected by some writers, I shall here assume that it has sufficient plausibility to make it worthwhile to investigate its implications for our present topic; readers who are less sympathetic might like to consider that it affords the only method of beating the no subject difficulty that doesn't involve positing a ghost or spirit to play the role. 8 The Epicurean insight, robustly defended by Partridge, that death eliminates 'a subject of harm and a bearer of interests', seemed to rule out any posthumous wrongful or disrespectful treatment of a person. But if we regard posthumously delivered calumny or detraction as having as its victim the *ante-mortem* person rather than the problematic person-after-death, the problem of the subject disappears, since persons before their death are indisputably real. So while there cannot be *posthumous* victims of posthumous slander, slanderous words uttered after a person's death are retrospectively disrespectful to the living subject. Similarly, if we fail to carry out a person's last wishes for the allocation of her property or the disposal of her body, we offend the *living* woman, not the dead. Although the breach of trust occurs only after she is dead, it sets back an interest she had during life, albeit one that concerned her posthumous future. Joel Feinberg, who has been an influential exponent of this theory, labels the interests which can be advanced or set back after death a person's 'moral estate' (Feinberg 1984: 83).

To say that a living person can be harmed or benefited (or wrongly or rightly treated) by acts performed after her death is not to subscribe to some metaphysically implausible theory of backwards causation. The phenomenon at issue is better described as one of backward signification. Cases of this kind occur commonly within life too. If Simon devotes time and

effort to studying for an exam which he then fails, then his studying turns out to have been in vain all along – though Simon couldn't have know that when he burned the midnight oil.

Likewise if Susan works hard at bringing up her children to be law-abiding citizens after she is gone, she is *at the time* pursuing an unsuccessful project if her children later become terrorists or drug dealers. The choices made by her children have significance for the living woman, constituting her project a failing one *while she pursued it*.⁹

It should be stressed that the claim that posthumous slander wrongs the living subject is not to be confused with the true but trivial observation that the content of posthumous slander concerns what subjects did while they were still alive. When Dr Smith slanders Professor Jones after the latter's death, his allegations are necessarily couched in the past tense. Nor is it simply the claim that attitudes of respect and their negative correlates can take past objects, including those which no longer exist; since this, though true, would still leave open the question of how posthumously expressed attitudes could be good or bad for the living subject before the event. But suppose now that Professor Jones was keen to be seen as a scientist of the highest professional integrity; it is *this* lifetime project which Dr Smith's malicious words are intended to damage and *do* damage if they persuade the world that the Professor was a cheat and a liar. Although Smith's words cannot alter the past, they make it the case that the living Jones was harmed all along by pursuing a project that wasn't going to succeed. (Note the wording here: 'wasn't going to succeed', not 'doomed to fail' – no fatalism is implied by this theory.) Establishing a sold reputation as an honest man and a virtuous academic was not to be one of Jones's achievements to be listed by subsequent biographers.

But what if Jones simply didn't care how anyone would think of him after his death, including even those closest to him? In that case, what harm or wrong can posthumous

slander possibly do to the ante-mortem person? To this, the answer may well be ‘none at all’, though probably very few people extend their indifference about posthumous reputation quite so far as this. In this version of Jones’s case, since an interest in being posthumously well regarded forms no part of his posthumous moral estate, it cannot be squelched after his death (though this does nothing to exonerate Smith from the charges of malice and mendacity). In the case of another, who is indifferent to what the world at large thinks of him after his death but is concerned that his nearest and dearest will retain their good opinion, harm will be done only if the slander reaches the ears of that select audience.

It might be asked when the harm of posthumous slander is supposed to occur – at the subject’s birth, perhaps? throughout his lifetime? just before his death? The most plausible answer to this has been proposed by Feinberg: it is from the time when a person develops the interests which are going to be squelched by the posthumous events (Feinberg 1984: 92). In the case of Professor Jones this is most likely to be during that phase or phases of his career to which Dr Smith’s slanderous allegations allude.

A person who doesn’t care what people think or say about him after his death cannot be harmed ante-mortem by posthumous slander, since he has no relevant interest to be squelched. But does the impossibility of harm in his case also mean that he cannot be wronged by it? This is a trickier question, though not because it concerns a subject who is dead when the slanderous words are said, for a parallel question can be posed about whether a subject who is indifferent to being slandered while he is alive is wronged by it. Someone who from malice or jealousy slanders another member of the kingdom of ends certainly acts wrongly and demonstrates a bad character. Reprehensible too, if in lesser degree, are treating another’s good name in a cavalier fashion (as Shaffer did Salieri’s) or a more generalised

carelessness in moral accounting. But these claims don't entail that slandering an indifferent subject actually wrongs the subject. However, Kant's view that such slander *does* wrong the subject gains credence from the thought that telling an unflattering lie about another moral agent, even one who is indifferent to the slander, is acting inappropriately towards a member of the kingdom of ends, whose status ought to be respected. And if this is right, then slandering an indifferent subject, whether during his lifetime or afterwards, is not merely acting wrongly but also wronging him. 10

VI

Even if an ante-mortem person can be harmed or wronged by things which are done after her death, it might be suggested that, in view of the permanent unconsciousness of the dead, these harms and wrongs will usually matter less than those done to the living. Consequently, where the interests of the dead and those of the living come into conflict, the latter might normally be expected to take precedence. Moreover, certain practices regarding the dead may be acceptable which would be out of moral order if their subjects were still alive. For instance, Shaffer's *Amadeus* might be thought tolerable, despite its unfairness to Salieri, on the ground that it provides entertainment for the living. Some writers have been adamant that in comparison with the rights of the living to benefits of various kinds, the rights of the dead are negligible. One of the most forthright, Cecile Fabre, has argued that the interests of the sick who require organ transplants are 'important enough' to confer a right on them to be given the organs of the newly-dead even against the clearly stated wishes of the deceased subject (Fabre 2006: 73). Not for Fabre the requirement of the UK Human Tissues Act 2004 that donors must previously have

given consent before their organs can be removed; in her view, the right of the patient to receive life-saving organs always trumps the right of people to leave binding instructions about the disposal of their own cadavers. But one might wonder whether *any* preferences of the dead, including those expressed in their testimonial requests, would now withstand competition from the claims of the living.

If a Feinberg-style account of the situation of the dead is correct, then a view of this kind must be wrong, since it misrepresents the nature of the contest between the rights of currently and formerly living persons. Once the *ante-mortem* rather than the post-mortem person is recognised as the real subject of harms and benefits, then the significant comparison is not between the respective rights and interests of the living and the dead but between different kinds of rights and interests of *living* people. Of course, there will remain many legitimate and often taxing questions about the relative significance of different interests. Is, for instance, the interest that a patient has in receiving a life-saving organ from a recently deceased person sufficiently weighty to justify overriding that person's refusal, ante-mortem, to allow his body to be used for such a purpose? But whatever the answer, this should be seen as a contest between the rights of living people (to life and to personal autonomy) and not between those of the quick and the dead. Less difficult is the question of whether slandering the dead is ever permissible for the sake of providing entertainment or satisfying the disreputable desires of the slanderer; here, for a variety of reasons we have looked at, the case in favour looks very weak.

Another pertinent implication of this account of posthumous harm and benefit is that *moral considerability does not decline with time*, and consequently there is no permission to do or say certain things in regard to older decedents that would be out of order in the case of more recent ones. Once all personal rights are assigned to living persons and taken to be grounded in

interests that they have while alive, then the factor of time-lapse has no bearing, since the only rights to be adjudicated are those of ante-mortem persons, who enjoy an equal status in the kingdom of ends. And since the crucial issue is the *ante-mortem equality* of all decedents, the length of time they have been dead is irrelevant in estimating the moral claims they make on us. To be sure, where people are less concerned about what will happen posthumously to their reputations, bodies or possessions beyond a certain span of time, some relaxation of the moral brakes may eventually be possible. But it is important to see that this relaxation turns on contingent facts about the temporal ambit of the living subject's projects and desires and not on some resistless, inevitable wearing-away of moral status after death.

Popular lore has it that death is the great equaliser, reducing both prince and peasant to dust. Imperious Caesar, Hamlet tells us, may now be stopping a hole to keep a wind away. I have been arguing for the equality of the dead, with one another and with ourselves, in a different sense, their moral equality irrespective of the date of their death or temporal distance from us. But I have ultimately construed this talk as another instance of metonymy: in speaking about the moral equality of the dead we are really referring to the equality of the living who will one day be dead, leaving behind them a moral estate which will be no less real just because their owners have paid the final debt of mortal flesh.

Notes.

1. This is a question, incidentally, also very relevant to the activities of archaeologists who uncover human remains. For a candid statement of a view that favours more recent burials over older ones, consider the following:

We may grant the impropriety of disturbing the repose of the freeholders in Finchley Cemetery. ... [But] a man's title to his goods, after his decease does not extend to an indefinite period. When a deceased gentleman has enjoyed the possession of his chattels for a couple of thousand years or more, I think he ought to be satisfied. His title has lapsed by the effluxion of time; and my title, by right of discovery, has come into being. The expression 'tomb-robber' is not applicable to an archaeological investigator (Freeman 1954: 11).

While this speaker happens to be fictional, the position he defends is not confined to fiction.

2. One author, T.M. Wilkinson, has even argued that people can acquire *new* interests after they die. Thus 'The interest in not having one's remains disturbed is new, since one does not have remains while one is alive' (Wilkinson 2002: 34-5). Yet if Partridge is correct, then there is no subject after death to have such an interest: so it is either no interest at all, or one that must be retrospectively ascribed to the living person.
3. It may occasionally be appropriate to reveal their bad deeds, however, when other innocent people might otherwise unfairly get the blame for them.
4. Kant does, however, leave it unclear how comprehensive he thinks our moral accounting ought to be and whether we should go out of our way to correct false positive and negative opinions about the dead.
5. I sidestep here questions about the metaphysical status of the future, since the point I want to make has more to do with epistemology than metaphysics. Whether or not the future in any sense exists *now*, or has any currently determinate features, *we* are unable to

give any characterisations of it beyond a very short way ahead; and it is this limitation of vision which conditions our limitation of interest.

6. See *Odes*, Bk.III.30. In Horace's case, however, the expression of a desire for immortal fame has the ring of a literary trope, and may not have been sincere.
7. I have discussed the case of Herostratos and the rationality of his motives in [*reference suppressed for the purposes of blind refereeing*].
8. For further defence of this position see, for example, Feinberg 1984, Pitcher 1984, Luper 2004 and 2009, Scarre 2007 and 2011 (forthcoming). For criticism see, inter alia, Glannon 2001, Taylor 2005, Belshaw 2009.
9. As Feinberg explains, this line of thought can also show why death itself is an evil, against the Epicurean objection: 'The subject of the harm in death,' he writes, 'is the living person antemortem, whose interests are squelched' (Feinberg 1984: 93). Dying young can be accounted worse than dying old because the youthful decedent has got relatively less far in fulfilling his natural human interests before they are squelched.
10. Arguably (and in partial qualification of my earlier concession) it is also harming him *if* to every member of the kingdom of ends can be ascribed an interest (conscious or not) in having that status acknowledged and respected.

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